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May 22, 2015

**BY U.S. CERTIFIED MAIL**

Citizen Suit Coordinator  
Environment and Natural Resources Division  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, DC 20044-7415

Attorney General  
U.S. Department of Justice  
Citizen Suit Coordinator  
Room 2615  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Re: *Renewed Efforts Of Neighbors Against Landfill Expansion v. County of Sonoma, et al.*,  
Case No. 3:14-CV-03804-TEH – Settlement Agreement Between Plaintiff RENALE,  
County of Sonoma and Sonoma County Waste Management Agency; 45-day review

Dear Citizen Suit Coordinators,

On May 21, 2015, three of the four parties in the above-captioned case entered into a settlement agreement setting forth mutually agreeable settlement terms to resolve the matter in its entirety as between plaintiff RENALE and two of the three defendants – the County of Sonoma and the Sonoma County Waste Management Agency. The case remains pending against Sonoma Compost Company. Pursuant to the terms of the settlement agreement and 40 C.F.R. § 135.5, the enclosed settlement agreement is being submitted to the United States Environmental Protection Agency and the U.S. Department of Justice for a 45-day review period. If you have any questions regarding the settlement agreement, please feel free to contact me or counsel for the two settling defendants listed below. Thank you for your attention to this matter.

Sincerely,

Michael R. Lozeau  
Lozeau Drury LLP  
Attorneys for Plaintiff RENALE

cc via First Class Mail:

Jared Blumenfeld, Regional Administrator, EPA Region 9

cc via E-Mail:

Christine Ennis, DOJ, [christine.ennis@usdoj.gov](mailto:christine.ennis@usdoj.gov)

Verne Ball  
Office of Sonoma County Counsel  
575 Administration Drive, Room 105-A  
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Attorneys for Defendant County of Sonoma

Encl.

Gene Tanaka  
Best Best & Krieger LLP  
2001 N. Main Street, Suite 390  
Walnut Creek, CA 94596  
Telephone: (925) 977-3300  
gene.tanaka@bbklaw.com

Attorneys for Sonoma County Waste  
Management Agency

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS**

This Settlement Agreement and Mutual Release of Claims ("Agreement") is entered into between the Renewed Efforts Of Neighbors Against Landfill Expansion ("RENALE"), the County of Sonoma ("Sonoma"), and the Sonoma County Waste Management Agency ("SCWMA") (collectively, the "Settling Parties") with respect to the following facts and objectives:

### **RECITALS**

**WHEREAS**, Defendant Sonoma is a county organized under the laws of California, which owns the Central Disposal Landfill site located at 500 Mecham Road in Petaluma, California ("Landfill");

**WHEREAS**, Defendant SCWMA holds a License Agreement for Use of County Facilities, dated April 23, 2013 ("License"), with Sonoma County authorizing SCWMA to operate a composting facility at the Landfill, ("Compost Facility") a map of which is attached hereto as Exhibit A and incorporated by reference;

**WHEREAS**, Plaintiff RENALE is an unincorporated association of concerned citizens residing near the Central Disposal Landfill site in Sonoma County;

**WHEREAS**, Sonoma Compost Co. operates the Compost Facility pursuant to an Organic Material Processing, Composting and Marketing Services Agreement, dated February 20, 2013 ("Operating Agreement"), with SCWMA to which Sonoma is not a party;

**WHEREAS**, Sonoma and SCWMA own or operate the Compost Facility, along with Sonoma Compost Co., subject to the requirements of State Water Resources Control Board Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities (hereinafter, the "General Permit").

**WHEREAS**, on or about June 17, 2014, RENALE provided Sonoma, SCWMA and Sonoma Compost Co. with a Notice of Violation and Intent to File Suit ("60-Day Notice Letter") under Section 505 of the Federal Water Pollution Control Act (the "Act" or "Clean Water Act"), 33 U.S.C. § 1365;

**WHEREAS**, on August 21, 2014, RENALE filed its Complaint in the United States District Court for the Northern District of California (*Renewed Efforts Of Neighbors Against*

*Landfill Expansion v. County of Sonoma, Sonoma Compost Company and Sonoma County Waste Management Agency*, Case No. 3:14-CV-3804-TEH). A true and correct copy of the Complaint, including the 60-Day Notice Letter, is attached hereto as Exhibit B and incorporated by reference;

**WHEREAS**, on March 6, 2015, Sonoma and SCWMA entered into a Joint Defense and Indemnity Agreement (“Indemnity Agreement”) which, among other terms, requires that by September 30, 2015 SCWMA build a compost detention pond at the Landfill, and, if specified milestones are not met or the detention pond not completed by September 30, 2015, SCWMA commits to terminate the License with the County and out-haul all yard and wood waste materials to other composting sites;

**WHEREAS**, SCWMA will not meet the July 15, 2015 milestone in the Indemnity Agreement to begin construction of the additional detention pond and therefore, SCWMA and the County agree that termination of the License and cessation of composting at the site is required pursuant to Section 3.3 of the Indemnity Agreement;

**WHEREAS**, Sonoma and SCWMA deny they are liable for RENALE’s claims set forth in its 60-Day Notice Letter and Complaint;

**WHEREAS**, RENALE, Sonoma and SCWMA, through their authorized representatives, and without either adjudication of RENALE’s claims or admission by Sonoma or SCWMA of any alleged violation or other wrongdoing on the part of Sonoma or SCWMA, have chosen to resolve in full RENALE’s allegations in the 60-Day Notice Letter and Complaint through settlement and avoid the cost and uncertainties of further litigation;

**WHEREAS**, RENALE, Sonoma and SCWMA have agreed that it is in their mutual interest to enter into this Agreement setting forth the terms and conditions appropriate to resolving RENALE’s allegations set forth in the 60-Day Notice Letter and Complaint; and

**WHEREAS**, Defendant Sonoma Compost Co. is not a party to this Agreement and nothing herein shall preclude or hinder RENALE’s right to continue to pursue its Clean Water Act claims alleged in the Complaint against Sonoma Compost Co.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, RENALE, Sonoma and SCWMA hereby agree as follows:

## **EFFECTIVE DATE**

1. **Effective Date.** The term “Effective Date,” as used in this Agreement, shall mean the last date on which the signature of a party to this Agreement is executed.

## **COMMITMENTS OF RENALE**

2. **Stipulation to Dismiss and [Proposed] Order.** Within ten (10) calendar days of the expiration of the Agencies’ review period specified in Paragraph 14 below, RENALE shall file a Stipulation to Dismiss and [Proposed] Order (“Stipulated Dismissal”) thereon pursuant to Federal Rule of Civil Procedure 41(a)(2) with the United States District Court for the Northern District of California (“District Court”), with this Agreement attached and incorporated by reference, specifying that RENALE is dismissing with prejudice all claims in RENALE’s Complaint against Sonoma and SCWMA. The Stipulation to Dismiss and [Proposed] Order shall state that the District Court will maintain jurisdiction through the Term of this Agreement set forth in Paragraph 21 below, or through the conclusion of any proceeding to enforce this Agreement that is initiated during the Term of this Agreement, for purposes of resolving any disputes between the Settling Parties with respect to any provision of this Agreement. The release of liability and covenant not to sue provided for in Paragraphs 16-17 below of this Agreement shall survive the termination of the Agreement. In the event the District Court does not enter the Order by August 1, 2015, the Settling Parties shall meet and confer to adjust the deadlines in Paragraphs 5 and 9 below. If the Settling Parties are unable to resolve any issue(s) regarding those deadlines, they agree to expeditiously seek a settlement conference with the Magistrate Judge that is assigned to this action to resolve the issue(s). If the District Court chooses not to enter the Order, this Agreement shall be null and void.

3. **Reservation of Rights.** Nothing in this Agreement restricts or waives RENALE’s right to object to or file litigation challenging the approval and siting of any future compost processing facility in Sonoma County, including but not limited to commenting on or challenging any environmental impact report or other California Environmental Quality Act document or any other agency approvals or permits prepared in furtherance of any such proposal to site a compost processing facility at the Landfill. This Agreement does not include dismissal of any claims alleged in the Complaint against Sonoma Compost Co. and RENALE may continue to litigate against or pursue any additional settlement with Sonoma Compost Co.

## COMMITMENTS OF SONOMA AND SCWMA

4. **Termination of License with SCWMA for Compost Operations at the Landfill.** Upon the Court's entry of an order dismissing Sonoma and SCWMA from this action pursuant to Paragraph 2 above, Sonoma and SCWMA shall immediately terminate SCWMA's License to operate the current compost processing operations at the Compost Facility.

5. Upon the Court's entry of an order dismissing Sonoma and SCWMA from this action pursuant to Paragraph 2 above, SCWMA shall take all steps necessary to cease all composting activity at the Compost Facility and return the Compost Facility site to Sonoma in a completely clean condition by a date not later than October 15, 2015, including but not limited to the following:

- a. SCWMA shall take all reasonable steps necessary to terminate the Operating Agreement with Sonoma Compost Co. and to remove Sonoma Compost Co. from the Compost Facility;
- b. SCWMA shall immediately cease all deliveries of any green waste and other compostable materials to the Compost Facility;
- c. By not later than August 15, 2015, SCWMA shall cease composting at the Compost Facility and shall outhaul the compost waste to another landfill or composting facility.

6. The Agency may, if necessary, continue to use the approximately twenty-seven (27) acre area at the Compost Facility for initial staging of green waste before transport to a processing site off of the Compost Facility until February 2017. Any such green waste staged in this area must be removed from the staging area and transported offsite within 48 hours of delivery at the staging area.

7. While the Agency believes in good faith that it has multiple grounds to terminate the Operating Agreement with Sonoma Compost and the License, the Parties to this Agreement recognize that Sonoma Compost may seek to avoid or delay the cessation of the compost processing operations by filing litigation contesting the termination of the Operating Agreement and/or License, which would be a circumstance that is not within the County's or Agency's control. Furthermore, a court order in such litigation may prevent SCWMA from completing the reasonable steps to terminate the Operating Agreement, cease composting and removing Sonoma Compost Co. Otherwise, such litigation will not affect this Agreement, provided however that in

the event of such litigation concerning the termination of the Operating Agreement and/or License, the following action would be within the County's and the Agency's control and would constitute a breach of this Agreement: any failure by the County or the Agency to defend against a claim that either the License or the Operating Agreement has not been legally terminated.

8. This Agreement does not extinguish or alter any rights or obligations that the County and the Agency may have under the Indemnity Agreement unless expressly excused or modified herein.

9. By not later than October 15, 2015, SCWMA shall remove all composting materials and equipment from the site, and leave the Compost Facility site free of wastes and products (including sweeping the concrete pad and other areas of the site after all materials are removed). Once the Compost Facility site is restored to a completely clean condition, Sonoma and SCWMA shall provide written notification to RENALE of Sonoma's written acceptance of the return by SCWMA to Sonoma of the Compost Facility site in clean condition. Within 14 days of receipt of a notice pursuant to this paragraph, RENALE may request access to the Compost Facility site to inspect the site conditions and to confirm compliance with this Agreement. The inspection may include photographing and videotaping. Sonoma and SCWMA shall provide RENALE access to the Compost Facility site within three business days of any such request or on a date mutually agreeable to the Parties.

10. **Mitigation Payment.** In recognition of this Agreement's terms of compliance, and in lieu of payment by Sonoma or SCWMA of any penalties, the SETTLING PARTIES agree that the SCWMA will pay the sum of One Hundred Thousand dollars (\$100,000.00) to the Rose Foundation for Communities and the Environment ("Rose Foundation") for the sole purpose of providing grants to environmentally beneficial projects in the Stemple Creek and Bodega Bay watersheds and Sonoma County relating to water quality improvements. None of the funds paid to the Rose Foundation shall be granted to RENALE, either directly or indirectly.

11. Payment shall be provided to the Rose Foundation as follows: Rose Foundation, 1970 Broadway, #600, Oakland, CA 94612, Attn: Tim Little. Payment shall be made by SCWMA to the Rose Foundation within fifteen (15) calendar days of the District Court's entry of the Order dismissing the action described in Paragraph 2 of this AGREEMENT. SCWMA shall copy RENALE with any correspondence and a copy of the check sent to the Rose Foundation. The Rose Foundation shall provide notice to the SETTLING PARTIES within

thirty (30) days of when the funds are dispersed by the Rose Foundation, setting forth the recipient and purpose of the funds.

12. **Fees, Costs, and Expenses.** As reimbursement for RENALE's investigative, expert and attorneys' fees, and costs up to the Effective Date, SCWMA shall pay one hundred thirty-one thousand dollars (\$131,000.00). Payment shall be made by SCWMA within fifteen (15) calendar days of the District Court's entry of the Order dismissing the action described in Paragraph 2 of this AGREEMENT. Payment by SCWMA to RENALE shall be made in the form of a single check payable to "Lozeau Drury LLP." Payment in full of this amount shall constitute full payment by Sonoma and SCWMA for all costs of litigation, including investigative, expert and attorneys' fees, and costs incurred by RENALE that have or could have been claimed against Sonoma and SCWMA in connection with RENALE's claims, up to and including the Effective Date of this AGREEMENT. Payment in full of this amount shall constitute full payment by the County and SCWMA of future fees and costs that will be incurred through the Termination Date, including but not limited to RENALE providing notice to the Environmental Protection Agency and Department of Justice, preparing pleadings to implement Paragraph 2 above, and to monitor, meet and confer, and evaluate the County's and SCWMA's compliance with this Agreement. The amount paid herein shall constitute all of the fees, costs, and expenses Sonoma and SCWMA must pay to RENALE for settlement of the lawsuit. Nothing in this Paragraph is intended to constrain RENALE's ability to seek attorneys' fees and costs to which RENALE may be entitled pursuant to 33 U.S.C. § 1365 from the remaining Defendant, Sonoma Compost Co.

13. **Signage.** Sonoma agrees to post a sign providing information to self-haul customers regarding other sites that receive self-haul in the County. The sign may contain an internet link where further information may be obtained.

14. **Review by Federal Agencies.** RENALE shall submit this Agreement to the U.S. EPA and the U.S. Department of Justice (hereinafter, the "Agencies") via certified mail, return receipt requested, on the Effective Date of this Agreement for review consistent with 40 C.F.R. § 135.5. The Agencies' review period expires upon the earlier of receipt of comments from the Agencies, or upon forty-five (45) days after receipt of the Agreement by both Agencies, as evidenced by the return receipts, copies of which shall be provided to Sonoma and SCWMA upon receipt by RENALE. In the event that the Agencies comment negatively on the provisions



of this Agreement, the Settling Parties agree to meet and confer to attempt to resolve the issue(s) raised by the Agencies. If the Settling Parties are unable to resolve any issue(s) raised by the Agencies in their comments, the Settling Parties agree to expeditiously seek a settlement conference with the Magistrate Judge that is assigned to this action to resolve the issue(s).

#### **NO ADMISSION OR FINDING**

15. Neither this Agreement nor any payment pursuant to the Agreement shall constitute evidence or be construed as a finding, adjudication, or acknowledgment of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule, or regulation. However, this Agreement and/or any payment pursuant to the Agreement may constitute evidence in any motion or action seeking compliance with this Agreement.

#### **MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

16. In consideration of the above, and except as otherwise provided by this Agreement, the Settling Parties hereby forever and fully release each other and their respective parents, affiliates, subsidiaries, divisions, insurers, successors, assigns, and current and former employees, attorneys, officers, directors and agents from any and all claims and demands of any kind, nature, or description whatsoever, and from any and all liabilities, damages, injuries, actions or causes of action, either at law or in equity, which the Settling Parties have against each other arising from RENALE's allegations and claims as set forth in the 60-Day Notice Letter and Complaint up to and including the Termination Date.

17. RENALE agrees that, upon the entry of the dismissal order pursuant to Paragraph 2 above and ending with the termination of this Agreement, that neither RENALE nor its members will file any lawsuit, encourage others to file any lawsuit, or financially or affirmatively support any lawsuit, against Sonoma or SCWMA seeking relief for alleged violations of the Clean Water Act and the General Permit from discharges of compost wastewater from the Compost Facility located at 500 Mecham Road in Petaluma.

18. The Settling Parties acknowledge that they are familiar with section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Settling Parties hereby waive and relinquish any rights or benefits they may have under California Civil Code section 1542 with respect to any other claims against each other arising from, or related to, the allegations and claims as set forth in the 60-Day Notice Letter and Complaint for storm water pollution from the Compost Facility up to and including the Termination Date of this Agreement.

#### **BREACH OF SETTLEMENT AGREEMENT AND DISPUTE RESOLUTION PROCEDURES**

19. Except as specifically noted herein, any disputes with respect to any of the provisions of this Agreement shall be resolved through the following procedure. In the event a Party believes that the other Party is in default of any provision or provisions of this Agreement, that Party shall provide the other Party with written notice of the alleged default. The written notice shall identify the provision of the Agreement that the Party believes has been breached, a general summary of the facts supporting the alleged default and, where appropriate, the manner in which the default may be satisfactorily cured. The Settling Parties agree to first meet and confer to resolve any dispute arising under this Agreement. In the event that such disputes cannot be resolved through this meet and confer process, the Settling Parties agree to request a settlement meeting before the Magistrate Judge that is assigned to this action. In the event that the Settling Parties cannot resolve the dispute by the conclusion of the settlement meeting with the Magistrate Judge, the Settling Parties agree to submit the dispute via motion to the District Court.

20. In resolving any dispute arising from this Agreement, the Court shall have discretion to award attorneys' fees and costs to either party. The relevant provisions of the then-applicable Clean Water Act and Rule 11 of the Federal Rules of Civil Procedure shall govern the award of fees and costs in connection with the resolution of any disputes arising from this Agreement before the District Court. The District Court shall award relief limited to compliance orders and awards of attorneys' fees and costs, subject to proof.

#### **TERM AND TERMINATION DATE OF AGREEMENT**

21. This Agreement shall extend from the Effective Date up to and including the later of: (a) the 30th day after the County provides written notification to RENALE pursuant to Paragraph 9 above of the County's written acceptance of the return by SCWMA to Sonoma of the Compost Facility site in clean condition, or (b) through the completion of any payment

required by this Agreement. However, if prior to the events in (a) or (b) of the preceding sentence, a Settling Party initiates any proceeding to enforce this Agreement pursuant to Paragraph 19 by the sending of the written notice of an alleged default, then the termination of this Agreement will extend to the conclusion of such proceeding.

#### **GENERAL PROVISIONS**

22. **Construction.** The language in all parts of this Agreement shall be construed according to its plain and ordinary meaning, except as to those terms defined by law, in the General Permit, Clean Water Act or specifically herein.

23. **Choice of Law.** This Agreement shall be governed by the laws of the United States, and where applicable, the laws of the State of California.

24. **Severability.** In the event that any provision, section, or sentence of this Agreement is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

25. **Correspondence.** All notices required herein or any other correspondence pertaining to this Agreement shall be sent by regular, certified, overnight mail, or e-mail as follows:

If to RENALE:

Roger Larsen  
RENALE  
68 Wambold Lane  
Petaluma, CA 94952  
Tel. (707) 799-0582  
rogerjlarsen@aol.com

And to:

Michael R. Lozeau  
Douglas J. Chermak  
Lozeau Drury LLP  
410 12th Street, Suite 250  
Oakland, CA 94607  
Tel: (510) 836-4200  
michael@lozeaudrury.com  
doug@lozeaudrury.com

If to Sonoma:

Susan Klassen, Director  
Sonoma County Department of Transportation and Public Works  
2300 County Center Drive, Suite B100  
Santa Rosa, CA 95403  
Tel: 707-565-2231  
susan.klassen@sonoma-county.org

And to:

Verne Ball  
Deputy County Counsel  
Office of the County Counsel  
County of Sonoma  
575 Administration Drive, Room 105A  
Santa Rosa, CA 95403-2881  
Tel: (707) 565-2421  
Verne.Ball@sonoma-county.org

If to SCWMA:

Henry J. Mikus  
Executive Director  
Sonoma County Waste Management Agency  
2300 County Center Drive Ste. B 100  
Santa Rosa, California 95403  
Tel: (707) 565-3788  
Henry.Mikus@sonoma-county.org

Gene Tanaka  
Best Best & Krieger LLP  
2001 N. Main Street, Suite 390  
Walnut Creek, CA 94596  
Tel: (925) 977-3300  
gene.tanaka@bbklaw.com

Notifications of communications shall be deemed submitted on the date that they are e-mailed, postmarked and sent by first-class mail or deposited with an overnight mail/delivery service. Any change of address or addresses shall be communicated in the manner described above for giving notices.

26. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together shall constitute one original document. Telecopied, scanned (.pdf), and/or

facsimiled copies of original signature shall be deemed to be originally executed counterparts of this Agreement.

27. **Assignment.** Subject only to the express restrictions contained in this Agreement, all of the rights, duties and obligations contained in this Agreement shall inure to the benefit of and be binding upon the Settling Parties, and their successors and assigns.

28. **Modification of the Agreement.** This Agreement, and any provisions herein, may not be changed, waived, discharged or terminated unless by a written instrument, signed by the Settling Parties.

29. **Full Settlement.** This Agreement constitutes a full and final settlement of this matter as between RENALE, Sonoma, and SCWMA. It is expressly understood and agreed that the Agreement has been freely and voluntarily entered into by the Settling Parties with and upon advice of counsel.

30. **Integration Clause.** This is an integrated Agreement. This Agreement is intended to be a full and complete statement of the terms of the agreement between the Settling Parties and expressly supersedes any and all prior oral or written agreements covenants, representations and warranties (express or implied) concerning the subject matter of this Agreement.

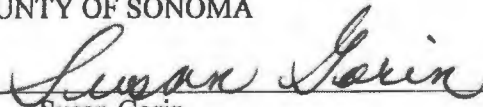
31. **Mistake of Fact or Law.** The Parties acknowledge that they are aware that they may hereafter discover facts or law different from or in addition to those they now know or believe to be true with respect to any claims, causes of action, rights, obligations, debts, liabilities, accounts, liens, damages, losses, and expenses arising from execution of this Agreement and each agrees that the Agreement shall remain in effect in all respects, notwithstanding any such mistake of fact or law.

32. **Authority.** The undersigned representatives for RENALE, Sonoma and SCWMA each certify that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of this Agreement.

The Settling Parties hereby enter into this Agreement.

Date: May 21, 2015

COUNTY OF SONOMA

By:   
Susan Gorin

Date: May \_\_, 2015

Title: Chair, Board of Supervisors

SONOMA COUNTY WASTE MANAGEMENT  
AGENCY

---

By: Henry J. Mikus  
Title: Executive Director

Date: May \_\_, 2015

RENEWED EFFORTS OF NEIGHBORS  
AGAINST LANDFILL EXPANSION

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By: Roger Larsen  
Title: President

APPROVED AS TO FORM:  
For DEFENDANT SONOMA COUNTY

Date: May 21, 2015

Office of the County Counsel, County of Sonoma



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By: Verne Ball, Esq.

For DEFENDANT SONOMA COUNTY WASTE MANAGEMENT AGENCY

Date: May \_\_, 2015

Best Best & Krieger LLP

---

By: Gene Tanaka, Esq.

For PLAINTIFF RENALE

Date: May \_\_, 2015

LOZEAU DRURY LLP

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By: Michael R. Lozeau, Esq.

Date: May \_\_, 2015

Title: Chair, Board of Supervisors

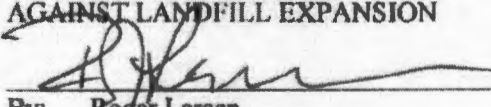
SONOMA COUNTY WASTE MANAGEMENT  
AGENCY

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By: Henry J. Mikus  
Title: Executive Director

Date: May 21, 2015

RENEWED EFFORTS OF NEIGHBORS  
AGAINST LANDFILL EXPANSION



---

By: Roger Larsen  
Title: President

APPROVED AS TO FORM:  
For DEFENDANT SONOMA COUNTY

Date: May \_\_, 2015

Office of the County Counsel, County of Sonoma

---

By: Verne Ball, Esq.

For DEFENDANT SONOMA COUNTY WASTE MANAGEMENT AGENCY

Date: May \_\_, 2015

Best Best & Krieger LLP

---

By: Gene Tanaka, Esq.

For PLAINTIFF RENALE

Date: May 21, 2015

LOZEAU DRURY LLP



---

By: Michael R. Lozeau, Esq.

Date: May 21, 2015

Title: Chair, Board of Supervisors

SONOMA COUNTY WASTE MANAGEMENT  
AGENCY



By: Henry J. Mikus  
Title: Executive Director

Date: May \_\_, 2015

RENEWED EFFORTS OF NEIGHBORS  
AGAINST LANDFILL EXPANSION

By: Roger Larsen  
Title: President

APPROVED AS TO FORM:  
For DEFENDANT SONOMA COUNTY

Date: May \_\_, 2015

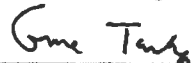
Office of the County Counsel, County of Sonoma

By: Verne Ball, Esq.

For DEFENDANT SONOMA COUNTY WASTE MANAGEMENT AGENCY

Date: May 21, 2015

Best Best & Krieger LLP



By: Gene Tanaka, Esq.

For PLAINTIFF RENALE

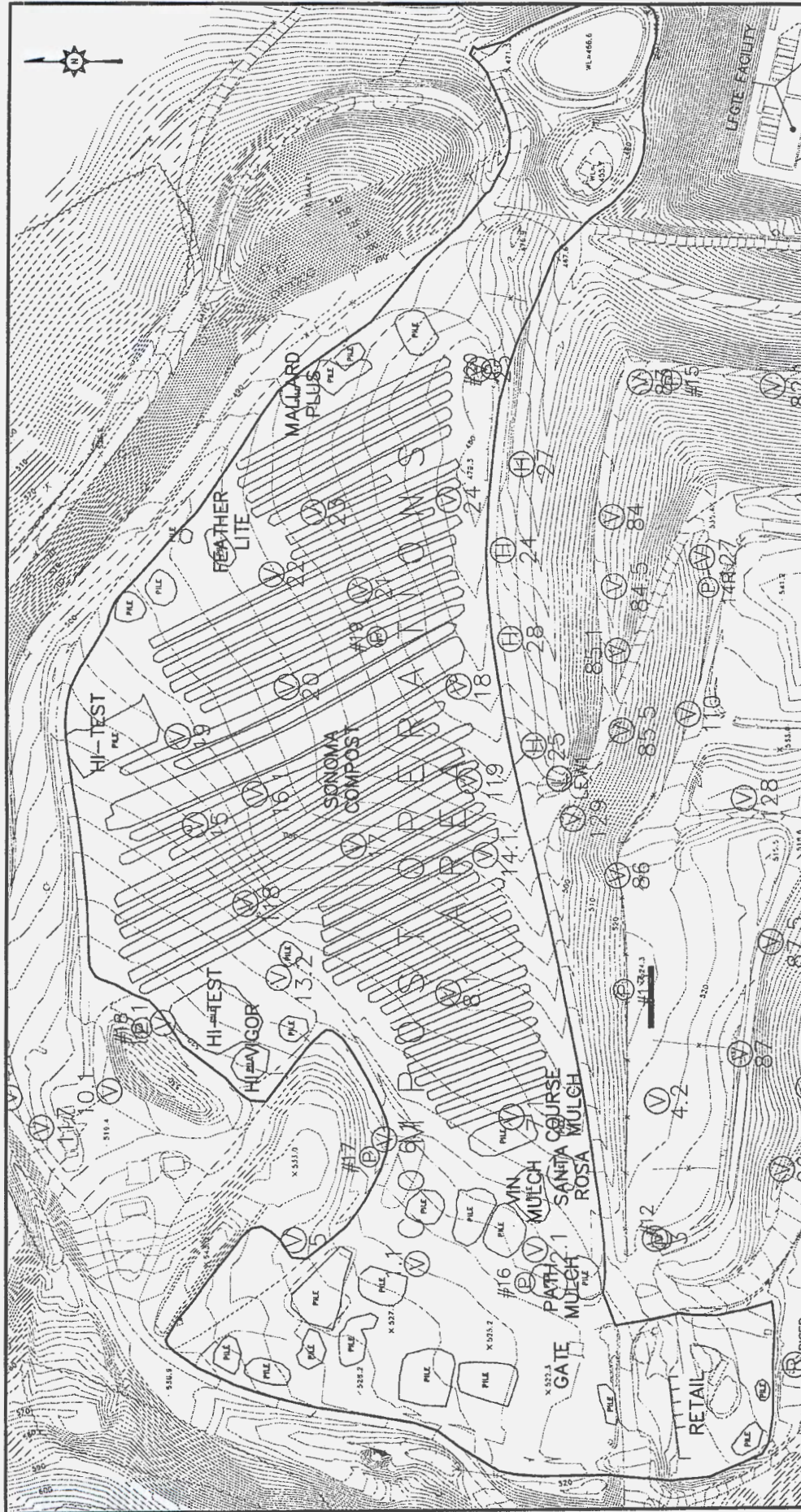
Date: May \_\_, 2015

LOZEAU DRURY LLP

By: Michael R. Lozeau, Esq.



# EXHIBIT A



<div> <div> </div> <div> <b>SITE PLAN</b>  SONOMA COMPOST  SONOMA COUNTY, CALIFORNIA </div> </div>	
DESIGNER:	DATE:
DRAFTER: KJF	DATE: 6/30/11
CHECKER:	DATE:
SCALE: 1" = 150'	

Exhibit A

# EXHIBIT B

1 Michael R. Lozeau (State Bar No. 142893)  
2 Richard T. Drury (State Bar No. 163559)  
3 Douglas J. Chermak (State Bar No. 233382)  
4 LOZEAU DRURY LLP  
5 410 12th Street, Suite 250  
6 Oakland, CA 94607  
7 Tel: (510) 836-4200  
8 Fax: (510) 836-4205 (fax)  
9 E-mail: michael@lozeaudrury.com  
10 richard@lozeaudrury.com  
11 doug@lozeaudrury.com

12 Attorneys for Plaintiff  
13 RENEWED EFFORTS OF NEIGHBORS  
14 AGAINST LANDFILL EXPANSION

15  
16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA

18 RENEWED EFFORTS OF NEIGHBORS  
19 AGAINST LANDFILL EXPANSION, an  
20 unincorporated association,

21 Plaintiff,

22 vs.

23 COUNTY OF SONOMA, a political  
24 subdivision of the State of California;  
25 SONOMA COMPOST COMPANY, a  
26 corporation; SONOMA COUNTY WASTE  
27 MANAGEMENT AGENCY, a public  
28 agency,

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF AND CIVIL  
PENALTIES**

(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 to 1387)

RENEWED EFFORTS OF NEIGHBORS AGAINST LANDFILL EXPANSION

("RENALE"), an unincorporated association, by and through its counsel, hereby alleges:

**I. JURISDICTION AND VENUE**

1. This is a civil suit brought under the citizen suit enforcement provisions of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the "Clean Water Act" or "the Act"). This Court has subject matter jurisdiction over the parties and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is authorized pursuant to 28



1 U.S.C. §§ 2201-02 (power to issue declaratory relief in case of actual controversy and further  
 2 necessary relief based on such a declaration); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief); and  
 3 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

4 2. On or about June 17, 2014, Plaintiff provided notice of Defendants' violations of the  
 5 Act, and of its intention to file suit against Defendants, to the Administrator of the United States  
 6 Environmental Protection Agency ("EPA"); the Administrator of EPA Region IX; the Executive  
 7 Director of the State Water Resources Control Board ("State Board"); the Executive Officer of the  
 8 California Regional Water Quality Control Board, North Coast Bay Region ("Regional Board"); and  
 9 to Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of  
 10 RENALE's notice letter is attached as Exhibit A, and is incorporated by reference.

11 3. More than sixty days have passed since notice was served on Defendants and the state  
 12 and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that neither the EPA  
 13 nor the State of California has commenced or is diligently prosecuting a court action to redress the  
 14 violations alleged in this complaint. This action's claim for civil penalties is not barred by any prior  
 15 administrative penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

16 4. Venue is proper in the Northern District of California pursuant to Section 505(c)(1) of  
 17 the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial  
 18 district. Pursuant to Local Rule 3-2(d), intradistrict venue is proper in Oakland, California, because  
 19 the source of the violations is located within Sonoma County.

## 20 **II. INTRODUCTION**

21 5. This complaint seeks relief for Defendants' discharges of polluted non-storm water  
 22 and polluted storm water from the composting facility at Defendant County of Sonoma's  
 23 ("Sonoma") industrial facility, the Central Disposal Site, located at 500 Mecham Road in Petaluma,  
 24 California in violation of the Act and National Pollutant Discharge Elimination System ("NPDES")  
 25 Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-  
 26 DWQ, as amended by Water Quality Order No. 92-12-DWQ and Water Quality Order No. 97-03-  
 27 DWQ (hereinafter the "Permit" or "General Permit"). Defendants' violations of the discharge  
 28 prohibitions, receiving water limitations, and treatment technology requirements of the Permit and

1 the Act are ongoing and continuous.

2 6. The failure on the part of persons and facilities such as Defendants and the Facility to  
3 comply with storm water requirements is recognized as a significant cause of water pollution in  
4 Stemple Creek, the Estero de San Antonio, Bodega Bay and other area receiving waters. The general  
5 consensus among regulatory agencies and water quality specialists is that storm pollution amounts to  
6 more than half of the total pollution entering the aquatic environment each year. In most areas of  
7 Sonoma County, storm water flows completely untreated through storm drain systems or other  
8 channels directly to the waters of the United States.

9 **III. PARTIES**

10 7. Plaintiff RENEWED EFFORTS OF NEIGHBORS AGAINST LANDFILL  
11 EXPANSION ("RENALE") is an incorporated organization of concerned citizens residing in close  
12 vicinity to the Central Disposal Site. Members of RENALE live at the Happy Acres subdivision,  
13 located on Mecham Road northeast of the Central Disposal Site. RENALE is very concerned about  
14 the environmental and public health impacts of the Facility.

15 8. Members of RENALE enjoy using Stemple Creek, the Estero de San Antonio, and  
16 Bodega Bay for recreation and other activities. Members of RENALE use and enjoy the waters into  
17 which Defendants have caused, is causing, and will continue to cause, pollutants to be discharged.  
18 Members of RENALE use those areas to recreate, walk, bird watch, and view wildlife, among other  
19 things. Defendants' discharges of pollutants threaten or impair each of those uses or contribute to  
20 such threats and impairments. Thus, the interests of RENALE's members have been, are being, and  
21 will continue to be adversely affected by Defendants' failure to comply with the Clean Water Act  
22 and the Permit. The relief sought herein will redress the harms to Plaintiff caused by Defendants'  
23 activities.

24 9. Continuing commission of the acts and omissions alleged above will irreparably harm  
25 Plaintiff and its members, for which harm they have no plain, speedy or adequate remedy at law.

26 10. Defendant County of Sonoma is a county duly organized and existing under the laws  
27 of the state of California. Sonoma's Transportation and Public Works Department owns and  
28 operates the Central Disposal Site, a landfill in Petaluma, California. The landfill includes a

1 composting facility.

2 11. Defendant Sonoma Compost Company ("Sonoma Compost") is a corporation that  
3 operates a composting facility ("Compost Facility") at the Central Disposal Site. Sonoma Compost  
4 operates the Compost Facility under a contract with the Sonoma County Waste Management  
5 Agency.

6 12. Defendant Sonoma County Waste Management Agency ("SCWMA") is a joint  
7 powers authority of the nine incorporated cities and the County of Sonoma. SCWMA contracts with  
8 Sonoma Compost to operate the Compost Facility.

9 **IV. STATUTORY BACKGROUND**

10 13. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any  
11 pollutant into waters of the United States, unless such discharge is in compliance with various  
12 enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not  
13 authorized by, or in violation of, the terms of an NPDES permit issued pursuant to Section 402 of  
14 the Act, 33 U.S.C. § 1342.

15 14. Section 402(p) of the Act establishes a framework for regulating municipal and  
16 industrial storm water discharges under the NPDES program. 33 U.S.C. § 1342(p). States with  
17 approved NPDES permit programs are authorized by Section 402(p) to regulate industrial storm  
18 water discharges through individual permits issued to dischargers or through the issuance of a single,  
19 statewide general permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(p).

20 15. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the U.S.  
21 EPA has authorized California's State Board to issue NPDES permits including general NPDES  
22 permits in California.

23 16. The State Board elected to issue a statewide general permit for industrial storm water  
24 discharges. The State Board issued the General Permit on or about November 19, 1991, modified  
25 the General Permit on or about September 17, 1992, and reissued the General Permit on or about  
26 April 17, 1997, pursuant to Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

27 17. In order to discharge storm water lawfully in California, industrial dischargers must  
28 comply with the terms of the General Permit or have obtained and complied with an individual

1 NPDES permit. 33 U.S.C. § 1311(a).

2 18. The General Permit contains several prohibitions. Effluent Limitation B(3) of the  
3 General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges  
4 through implementation of the Best Available Technology Economically Achievable (“BAT”) for  
5 toxic and nonconventional pollutants and the Best Conventional Pollutant Control Technology  
6 (“BCT”) for conventional pollutants. BAT and BCT include both nonstructural and structural  
7 measures. General Permit, Section A(8). Conventional pollutants are total suspended solids, oil &  
8 grease, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants  
9 are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

10 19. Discharge Prohibition A(1) of the General Permit requires that “materials other than  
11 storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the  
12 United States are prohibited. Prohibited non-storm water discharges must be either eliminated or  
13 permitted by a separate NPDES permit.” Special Condition D(1) of the General Permit authorizes  
14 the following types of non-storm water discharges: “fire hydrant flushing; potable water sources,  
15 including potable water related to the operation, maintenance, or testing of potable water systems;  
16 drinking fountain water; atmospheric condensates including refrigeration, air conditioning, and  
17 compressor condensate; irrigation drainage; landscape watering; springs; ground water; foundation  
18 or footing drainage; and sea water infiltration where the sea waters are discharged back into the sea  
19 water source.” Such authorized non-storm water discharges must also meet a number of conditions  
20 including, among others, that such discharges “do not contain significant quantities of pollutants”  
21 and that “the non-storm water discharges are reported and described annually as part of the annual  
22 report.” Special Conditions D(1)(b). Compost wastewater is not an authorized non-storm water  
23 discharge.

24 20. Discharge Prohibition A(2) of the General Permit prohibits storm water discharges  
25 and authorized non-storm water discharges that cause or threaten to cause pollution, contamination,  
26 or nuisance.

27 21. Receiving Water Limitation C(1) of the General Permit prohibits storm water  
28 discharges to any surface or ground water that adversely impact human health or the environment.



1 Receiving Water Limitation C(2) of the General Permit prohibits storm water discharges that cause  
2 or contribute to an exceedance of any applicable water quality standards contained in a Statewide  
3 Water Quality Control Plan or the applicable Regional Board's Basin Plan.

4 22. The General Permit does not provide for any mixing zones by dischargers. The  
5 General Permit does not provide for any dilution credits to be applied by dischargers. As a result,  
6 compliance with Receiving Water Limitation C(2) is measured at a discharger's storm water  
7 monitoring location.

8 23. The General Permit requires that facility operators "investigate the facility to identify  
9 all non-storm water discharges and their sources. As part of this investigation, all drains (inlets and  
10 outlets) shall be evaluated to identify whether they connect to the storm drain system. All non-storm  
11 water discharges shall be described. This shall include the source, quantity, frequency, and  
12 characteristics of the non-storm water discharges and associated drainage area." Section A(6)(a)(v).  
13 The General Permit authorizes certain non-storm water discharges providing that the non-storm  
14 water discharges are in compliance with Regional Board requirements; that the non-storm water  
15 discharges are in compliance with local agency ordinances and/or requirements; that best  
16 management practices are included in the Storm Water Pollution Prevention Plan to (1) prevent or  
17 reduce the contact of non-storm water discharges with significant materials or equipment and (2)  
18 minimize, to the extent practicable, the flow or volume of non-storm water discharges; that the non-  
19 storm water discharges do not contain significant quantities of pollutants; and that the monitoring  
20 program includes quarterly visual observations of each non-storm water discharge and its sources to  
21 ensure that BMPs are being implemented and are effective (Special Conditions D). Section B(3) of  
22 the General Permit requires dischargers to conduct visual observations of all drainage areas for the  
23 presence of non-storm water discharges, to observe the non-storm water discharges, and maintain  
24 records of such observations.

25 24. The Regional Board has established beneficial uses of the North Coast Region's  
26 water and established water quality standards for the Estero de San Antonio as well as coastal  
27 streams including Stemple Creek in the Water Quality Control Plan for the North Coast Region,  
28 generally referred to as the Basin Plan. *See* <http://www.waterboards.ca.gov/northcoast/>

1 water\_issues/programs/basin\_plan/basin\_plan.shtml.

2 25. The beneficial uses of these waters, include, among others, water contact recreation,  
3 non-contact water recreation, commercial and sport fishing, municipal and domestic water supply,  
4 marine habitat, shellfish harvesting, and navigation. The non-contact water recreation use is defined  
5 as “[u]ses of water for recreational activities involving proximity to water, but not normally  
6 involving body contact with water, where ingestion of water is reasonably possible. These uses  
7 include, but are not limited to, picnicking, sunbathing, hiking, . . ., camping, boating, . . ., hunting,  
8 sightseeing, or aesthetic enjoyment in conjunction with the above activities.” Basin Plan at 2-2.00.

9 26. The Facility is also subject to Waste Discharge Requirements for Operation,  
10 Corrective Action, New Construction, and Closure at the Sonoma County Central Disposal Site  
11 (“WDRs”), certified by the Regional Board on March 14, 2013. Order No. R1-2013-0003. The  
12 County is listed as the Discharger on the WDRs. Discharge Prohibition A(3) of the WDRs provides  
13 that “[t]he discharge of waste including solids, liquids, leachate, or landfill gas to surface water,  
14 surface water drainage systems or groundwater is prohibited.” Discharge Prohibition A(15) provides  
15 that “[t]he discharge of wastes from activities occurring upon or within the landfill footprint,  
16 including composting activities, to stormwater sedimentation basins, surface, and/or ground water is  
17 prohibited.”

18 27. Section 505(a)(1) and Section 505(f) of the Clean Water Act provide for citizen  
19 enforcement actions against any “person,” including individuals, corporations, or partnerships, for  
20 violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1) and (f), § 1362(5). An action for  
21 injunctive relief under the Act is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also  
22 subject to an assessment of civil penalties of up to \$37,500 per day per day pursuant to Sections  
23 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 - 19.4.

24 **V. STATEMENT OF FACTS**

25 28. Defendant County owns and operates the Central Disposal Site, a landfill, recycling,  
26 and composting facility located at 500 Mecham Road in Petaluma, California. On information and  
27 belief, RENALE alleges that the composting of municipal yard debris and vegetative food waste at  
28 the Compost Facility at the Central Disposal Site is operated by Sonoma Compost. The Central

1 Disposal Site falls within SIC Codes 5093, 1429, and 4953. The Central Disposal Site covers  
2 approximately 372 acres. The Compost Facility encompasses approximately 35 acres at the Central  
3 Disposal Site. Plaintiff is informed and believes, and thereupon alleges that all composting  
4 operations occur in outdoor areas.

5 29. The Central Disposal Site collects and discharges storm water into a series of  
6 perimeter ditches, storm drain pipes, downchutes, and sedimentation ponds ("storm water  
7 management system"). The sedimentation ponds discharge the storm water to two unnamed  
8 tributaries that flow to Stemple Creek, which flows to the Estero de San Antonio, which flows to  
9 Bodega Bay.

10 30. On information and belief, Plaintiff alleges that compost wastewater from the  
11 Compost Facility flows to the Central Disposal Site's storm water management system, which is  
12 ultimately discharged through channels that flow to Stemple Creek.

13 31. On information and belief, Plaintiff alleges that the industrial activities at the Central  
14 Disposal Site include the sorting, processing, and storage of solid waste and recyclable materials.  
15 Materials handled at the Central Disposal Site include, but are not limited to, solid waste, yard  
16 debris, food waste, wood waste, appliances, and electronics.

17 32. Compost operations at the Compost Facility of the Central Disposal Site occur  
18 entirely outside and consist of the receipt of green material and wood waste, processing (grinding) of  
19 green material and wood waste, windrow composting of green material (yard trimmings with some  
20 commingled food scraps), and load-out of finished compost and processed wood waste.

21 33. Plaintiff is informed and believes, and thereupon alleges that storm water flows easily  
22 over the surface of the Compost Facility, collecting suspended sediment, nitrates, phosphorous and  
23 other pollutants as it flows toward the Central Disposal Site's storm water management system.

24 34. On information and belief, Plaintiff alleges that BAT/BCT for any storm water  
25 discharges from the Compost Facility would be the elimination of those discharges. The WDRs for  
26 the Central Disposal Site prohibit any discharges from the Compost Facility from reaching the storm  
27 water sedimentation ponds at the Central Disposal Site.

28 35. On information and belief, Plaintiff alleges that since at least June 22, 2009,

1 Defendants have failed to implement BAT and BCT at the Facility for its discharges from the  
 2 Compost Facility. Section B(3) of the General Permit requires that Defendants implement BAT for  
 3 toxic and nonconventional pollutants and BCT for conventional pollutants by no later than October  
 4 1, 1992. Composting operations began at the Central Disposal Site in 1993. As of the date of this  
 5 Complaint, Defendants have failed to implement BAT and BCT.

6 36. Information available to Plaintiff indicates that Defendants have not fulfilled the  
 7 requirements set forth in the General Permit for discharges from the Facility due to the continued  
 8 discharge of compost wastewater and contaminated storm water from the Compost Facility. Plaintiff  
 9 is informed and believes, and thereupon alleges, that all of the violations alleged in this Complaint are  
 10 ongoing and continuing.

# 11 **VI. CLAIMS FOR RELIEF**

## 12 **FIRST CAUSE OF ACTION**

### 13 **Discharges of Non-storm Water**

#### 14 **in Violation of Permit Conditions and the Act**

#### 15 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

16 37. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth  
 17 herein.

18 38. Discharge Prohibition A(1) of the General Permit prohibits non-storm water  
 19 discharges that discharge either directly or indirectly to waters of the United States. It requires either  
 20 the elimination of those non-storm water discharges or requires that a discharger obtain a separate  
 21 NPDES permit for the discharges.

22 39. Compost wastewater is not a type of authorized non-storm water discharge authorized  
 23 by Special Condition D(1) of the General Permit.

24 40. Plaintiff is informed and believes, and thereupon alleges, that since at least June 22,  
 25 2009, Defendants have been discharging compost wastewater from the Compost Facility at the Central  
 26 Disposal Site in violation of the Discharge Prohibition A(1) of the General Permit. Said compost  
 27 wastewater enters the storm water management system at the Central Disposal system and is  
 28 discharged to channels that flow to Stemple Creek.

41. Every day since at least June 22, 2009, that Defendants have discharged and continue to



1 discharge compost wastewater from the Central Disposal Site in violation of the General Permit is a  
2 separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These violations are  
3 ongoing and continuous.

4 **SECOND CAUSE OF ACTION**

5 **Failure to Implement the Best Available and**  
6 **Best Conventional Treatment Technologies**  
**(Violations of 33 U.S.C. §§ 1311, 1342)**

7 42. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth  
8 herein.

9 43. Effluent Limitation B(3) of the General Permit require dischargers to reduce or  
10 prevent pollutants in their storm water discharges through implementation of BAT for toxic and  
11 nonconventional pollutants and BCT for conventional pollutants. Defendants have failed to  
12 implement BAT and BCT at the Facility for its storm water discharges from the Composting Facility  
13 to the Central Disposal Site's storm water management system.

14 44. Each day since June 22, 2009, that Defendants have failed to develop and implement  
15 BAT and BCT in violation of the General Permit is a separate and distinct violation of the General  
16 Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

17 45. Defendants have been in violation of the BAT/BCT requirements every day since June  
18 22, 2009. Defendants continue to be in violation of the BAT/BCT requirements each day that it fails to  
19 develop and fully implement BAT/BCT for discharges from the Compost Facility.

20 **VII. RELIEF REQUESTED**

21 Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

22 a. Declare Defendants to have violated and to be in violation of the Act as alleged  
23 herein;

24 b. Enjoin Defendants from discharging compost wastewater and polluted storm  
25 water from the Compost Facility unless authorized by the Permit, including but not limited to  
26 ceasing deliveries to the Compost Facility and removing all pollution sources pending compliance  
27 with the Permit;

28 c. Enjoin Defendants from further violating the substantive and procedural

1 requirements of the Permit;

2 d. Order Defendants to provide Plaintiff with reports documenting the elimination of  
3 both compost wastewater discharges and storm water discharges from the Compost Facility;

4 e. Order Defendants to pay civil penalties of \$37,500 per day for each violation of the  
5 Act pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§  
6 19.1 - 19.4;

7 f. Order Defendants to take appropriate actions to restore the quality of waters  
8 impaired or adversely affected by their activities;

9 g. Award Plaintiff's costs (including reasonable investigative, attorney, witness,  
10 compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

11 h. Award any such other and further relief as this Court may deem appropriate.  
12

13 Dated: August 21, 2014

Respectfully submitted,

14 LOZEAU DRURY LLP  
15

16 By: /s/ Douglas J. Chermak  
17 Douglas J. Chermak  
18 Attorneys for Plaintiff  
19 RENEWED EFFORTS OF NEIGHBORS AGAINST  
20 LANDFILL EXPANSION  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT A



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410 12th Street, Suite 250  
Oakland, Ca 94607

www.lozeaudrury.com  
doug@lozeaudrury.com

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

June 17, 2014

Susan Klassen – Director County of Sonoma – Transportation and Public Works Department 2300 County Center Dr. Ste B-100 Santa Rosa, CA 95407	3 <sup>rd</sup> District Supervisor Shirlee Zane County of Sonoma Board of Supervisors 575 Administration Drive, Room 100A Santa Rosa, CA 95403
Henry Mikus, Executive Director Sonoma County Waste Management Agency 2300 County Center Dr. Ste B-100 Santa Rosa, CA 95407	4 <sup>th</sup> District Supervisor Mike McGuire County of Sonoma Board of Supervisors 575 Administration Drive, Room 100A Santa Rosa, CA 95403
1 <sup>st</sup> District Supervisor Susan Gorin County of Sonoma Board of Supervisors 575 Administration Drive, Room 100A Santa Rosa, CA 95403	5 <sup>th</sup> District Supervisor Efrén Carrillo County of Sonoma Board of Supervisors 575 Administration Drive, Room 100A Santa Rosa, CA 95403
2 <sup>nd</sup> District Supervisor David Rabbitt County of Sonoma Board of Supervisors 575 Administration Drive, Room 100A Santa Rosa, CA 95403	Trish Pisenti Central Disposal Site 500 Mecham Road Petaluma, CA 94952
Alan Siegle, Co-Owner Sonoma Compost Company 550 Mecham Road Petaluma, CA 94952	Will Bakx, Co-Owner Sonoma Compost Company 550 Mecham Road Petaluma, CA 94952

**Re: Notice of Violations and Intent to File Suit Under the Federal Water  
Pollution Control Act**

Notice of Violations and Intent to File Suit



Notice of Violations/Intent re: Central Disposal Site

June 17, 2014

Page 2 of 8

Dear Messrs Mikus, Rabbitt, Siegle, McGuire, Carrillo, and Bakx; and Mmes Klassen, Gorin, Zane, and Pisenti:

I am writing on behalf of Renewed Efforts of Neighbors Against Landfill Expansion (“RENALE”) in regard to violations of the Federal Water Pollution Control Act (the “Clean Water Act” or “Act”) that RENALE believes are occurring at Central Disposal Site, the County of Sonoma’s industrial facility located at 500 Mecham Road in Petaluma, California (“Facility”). RENALE is an unincorporated organization of concerned citizens residing in close vicinity to the Central Disposal Site. Members of RENALE live at the Happy Acres subdivision, located on Mecham Road northeast of the Central Disposal Site, and are concerned about the environmental and public health impacts of the Facility. The violations in particular relate to the operations of the composting facility at the Central Disposal Site. This letter is being sent to you as the responsible owners, officers, or operators of the Facility (all recipients are hereinafter collectively referred to as “Central Disposal”).

This letter addresses Central Disposal’s unlawful discharge of pollutants from the Facility into channels that flow into Stemple Creek, which then flows into the Estero de San Antonio, which then flows into Bodega Bay. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System (“NPDES”) Permit No. CA S000001, State Water Resources Control Board (“State Board”) Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter “General Permit”).<sup>1</sup> The WDID identification number for the Facility listed on documents submitted to the Regional Water Quality Control Board, North Coast Region (“Regional Board”) is 1 49I006101. The Facility is engaged in ongoing violations of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“EPA”) and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Central Disposal is hereby placed on formal notice by RENALE that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, RENALE intends to file suit in federal court against Central Disposal under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

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<sup>1</sup> On April 1, 2014, the State Board reissued the General Permit, continuing its mandate that industrial facilities implement the best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”) and, in addition, establishing numeric action levels mandating additional pollution control efforts. State Board Order 2014-0057-DWQ. The new permit, however, does not go into effect until July 1, 2015. Until that time, the current General Permit remains in full force and effect.

Notice of Violations/Intent re: Central Disposal Site  
June 17, 2014  
Page 3 of 8

**I. Background.**

On April 21, 1992, the State Board approved Central Disposal's Notice of Intent to Comply With the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI"). The County of Sonoma is listed as the facility operator on the NOI. In its NOI and Annual Reports, Central Disposal has certified that the Facility is classified under SIC Codes 5093, 1429, and 4953. The Facility collects and discharges storm water from its 372-acre industrial site into a series of perimeter ditches, stormdrain pipes, downchutes, and sedimentation ponds. The sedimentation ponds discharge the storm water to two unnamed tributaries that flow to Stemple Creek, which flows to the Estero de San Antonio, which flows to Bodega Bay.

The composting facility encompasses 35 acres at the Central Disposal Site. Its operations consist of the receipt of green material and wood waste, processing (grinding) of green material and wood waste, windrow composting of green material (yard trimmings with some commingled food scraps), and load-out of finished compost and processed wood waste. Sonoma Compost Company ("SCC") currently operates the existing composting facility at the Central Disposal Site under a contract to the Sonoma County Waste Management Agency ("SCWMA"). Waste discharges from the composting facility enter the storm water management system at Central Disposal, ultimately discharging from the Facility through channels that flow to Stemple Creek.

The Regional Board has identified beneficial uses of the North Coast Region's waters and established water quality standards for the Estero de San Antonio as well as coastal streams including Stemple Creek, in the "Water Quality Control Plan for the North Coast Region," generally referred to as the Basin Plan. *See* [http://www.waterboards.ca.gov/northcoast/water\\_issues/programs/basin\\_plan/basin\\_plan.shtml](http://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/basin_plan.shtml). The beneficial uses of these waters, include, among others, water contact recreation, non-contact water recreation, commercial and sport fishing, municipal and domestic water supply, marine habitat, shellfish harvesting, and navigation. The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving body contact with water, where ingestion of water is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, . . . , camping, boating, . . . , hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." Basin Plan at 2-2.00.

The Facility is also subject to Waste Discharge Requirements for Operation, Corrective Action, New Construction, and Closure at the Sonoma County Central Disposal Site ("WDRs"), certified by the Regional Board on March 14, 2013. Order No. R1-2013-0003. The County of Sonoma is listed as the Discharger on the WDRs. Discharge Prohibition A(3) of the WDRs provides that "[t]he discharge of waste including solids, liquids, leachate, or landfill gas to surface water, surface water drainage systems or groundwater is prohibited." Discharge Prohibition A(15) provides that "[t]he discharge of wastes from activities occurring upon or within the landfill footprint, including composting activities, to stormwater sedimentation basins, surface, and/or ground water is prohibited."

Notice of Violations/Intent re: Central Disposal Site  
June 17, 2014  
Page 4 of 8

**II. Alleged Violations of the Clean Water Act and the General Permit.**

**A. *Non-storm Waters Discharges in Violation of the Permit***

Central Disposal has violated and continues to violate the terms and conditions of the General Permit. Discharge Prohibition A(1) requires that “materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.” Special Condition D(1) of the General Permit authorizes the following types of non-storm water discharges: “fire hydrant flushing; potable water sources, including potable water related to the operation, maintenance, or testing of potable water systems; drinking fountain water; atmospheric condensates including refrigeration, air conditioning, and compressor condensate; irrigation drainage; landscape watering; springs; ground water; foundation or footing drainage; and sea water infiltration where the sea waters are discharged back into the sea water source.” Such authorized non-storm water discharges must also meet a number of conditions including, among others, that such discharges “do not contain significant quantities of pollutants” and that “the non-storm water discharges are reported and described annually as part of the annual report.” Special Conditions D(1)(b).

On information and belief, RENALE alleges that the Facility has been discharging and continues to discharge non-storm water in violation of Discharge Prohibition A(1) of the General Permit. As described in a March 18, 2014 letter from Matthias St. John, Executive Officer of the Regional Board, to Susan Klassen, Director of the Sonoma County Department of Transportation and Public Works (“Regional Board letter”), the Facility has been continually discharging compost wastewater to local receiving waters. The Regional Board letter observes that the Best Management Practices (“BMPs”) at the compost deck of the Facility will be “dwarfed by the volume of runoff and sediment generated on the compost deck during a large storm event.” It relates that SCMWA recently abandoned a plan to reduce wastewater discharges during the 2013-2014 rainy season. The letter concludes that the Regional Board is “concerned by the lack of progress in developing a viable long-term discharge elimination plan within the proposed timeframe of completion before the next rainy season...”

Compost wastewater is not a type of authorized non-storm water discharge authorized by Special Condition D(1) of the General Permit. Accordingly, the discharge of compost wastewater to waters of the United States is prohibited by Discharge Prohibition A(1) of the General Permit. On information and belief, RENALE alleges that compost wastewater from the composting operations at the Facility regularly flows to the Facility’s storm water drainage system and is subsequently discharged from the Facility to two unnamed tributaries that flow to Stemple Creek, which flows to the Estero de San Antonio, which flows to Bodega Bay.

These violations have been occurring since at least June 17, 2009 and are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Central Disposal is subject to penalties for violations of the General Permit and the Clean Water Act since June 17, 2009.

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***B. Discharges in Violation of the Permit not Subjected to BAT/BCT***

Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and non-conventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Discharge Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2). As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

To the extent that discharges from the composting facility at Central Disposal would be considered storm water discharges associated with industrial activity, RENALE's investigation indicates that Central Disposal has not implemented BAT and BCT at the Facility for those discharges. BAT/BCT for discharges of waste from the composting activities at the Facility is the elimination of such discharges – the WDRs prohibit such discharges from reaching even the stormwater sedimentation basins at the Facility. The Facility was required to have implemented BAT and BCT by no later than October 1, 1992, and the composting operations at the Facility began in 1993. Thus, on information and belief, RENALE alleges that Central Disposal is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

On information and belief, RENALE alleges that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit. CCAT alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since June 17, 2009, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which RENALE alleges that Central Disposal has discharged storm water containing impermissible discharges from the composting area at the Facility in violation of

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Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the General Permit.<sup>2</sup>

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing pollutants from the composting operations constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Central Disposal is subject to penalties for violations of the General Permit and the Act since June 17, 2009.

### **III. Persons Responsible for the Violations.**

RENALE puts Central Disposal, Sonoma Compost Company, the County, Sonoma County Waste Management Agency, Henry Mikus, Will Bakx, Alan Siegle, Trish Pisenti, and Susan Klassen on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, RENALE puts Central Disposal and the above individuals on notice that it intends to include those persons in this action.

### **IV. Name and Address of Noticing Parties.**

The name, address and telephone number of RENALE is as follows:

Roger Larsen  
RENALE  
68 Wambold Lane  
Petaluma, CA 94952  
Tel. (707) 799-0582  
rogerjlarsen@aol.com

### **V. Counsel.**

RENALE has retained counsel to represent it in this matter. Please direct all communications to:

Michael R. Lozeau  
Douglas J. Chermak  
Lozeau Drury LLP  
410 12th Street, Suite 250  
Oakland, California 94607  
Tel. (510) 836-4200

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<sup>2</sup> The rain dates are all the days when at least 0.1" or more of rain fell as measured by a weather station in Petaluma, California, approximately 8 miles away from the Facility.  
[http://www.ipm.ucdavis.edu/calludt.cgi/WXDESCRIPTION?STN=PETALUMA\\_EAST.A](http://www.ipm.ucdavis.edu/calludt.cgi/WXDESCRIPTION?STN=PETALUMA_EAST.A)  
(Last accessed on June 16, 2014).

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michael@lozeaudrury.com  
doug@lozeaudrury.com

**VI. Penalties Pursuant to the Clean Water Act.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Central Disposal Sonoma Compost Company, the County, Sonoma County Waste Management Agency, Henry Mikus, Will Bakx, Alan Siegle, Trish Pisenti, and Susan Klassen to a penalty of up to \$37,500 per day per violation. In addition to civil penalties, RENALE will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

RENALE believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. RENALE intends to file a citizen suit under Section 505(a) of the Act against Central Disposal, Sonoma Compost Company, the County, Sonoma County Waste Management Agency, Henry Mikus, Will Bakx, Alan Siegle, Trish Pisenti, and Susan Klassen =for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, RENALE would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, RENALE suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. RENALE does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Douglas J. Chermak  
Lozeau Drury LLP  
Attorneys for RENALE

cc via first class mail: Alan Siegle, Agent for Service of Process for Sonoma Compost Company  
6789 Berryhill Ct.  
Forestville, CA 95436

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**SERVICE LIST**

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Thomas Howard, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Eric Holder, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Jared Blumenfeld, Regional Administrator  
U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

Matthias St. John, Executive Officer  
North Coast Regional Water Quality Control Board  
5550 Skylane Boulevard, Suite A  
Santa Rosa, CA 95403

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**ATTCHMENT A**

**Rain Dates, Central Disposal Site, Petaluma, California**

10/13/2009	4/27/2010	2/24/2011
10/15/2009	5/10/2010	2/25/2011
10/19/2009	5/17/2010	3/2/2011
12/11/2009	5/25/2010	3/5/2011
12/12/2009	5/27/2010	3/6/2011
12/13/2009	10/22/2010	3/13/2011
12/16/2009	10/23/2010	3/15/2011
12/26/2009	10/24/2010	3/17/2011
12/29/2009	10/28/2010	3/18/2011
1/1/2010	10/29/2010	3/19/2011
1/17/2010	11/7/2010	3/20/2011
1/19/2010	11/19/2010	3/22/2011
1/20/2010	11/20/2010	3/23/2011
1/21/2010	11/21/2010	3/24/2011
1/22/2010	11/22/2010	3/25/2011
1/23/2010	11/27/2010	3/26/2011
1/25/2010	12/5/2010	4/13/2011
1/29/2010	12/8/2010	4/20/2011
2/4/2010	12/14/2010	4/25/2011
2/6/2010	12/17/2010	5/14/2011
2/9/2010	12/18/2010	5/15/2011
2/12/2010	12/19/2010	5/16/2011
2/23/2010	12/20/2010	5/17/2011
2/26/2010	12/21/2010	5/25/2011
2/27/2010	12/22/2010	5/28/2011
3/2/2010	12/25/2010	5/31/2011
3/3/2010	12/26/2010	6/1/2011
3/9/2010	12/28/2010	6/4/2011
3/12/2010	1/1/2011	10/4/2011
3/24/2010	1/2/2011	11/5/2011
3/29/2010	1/13/2011	11/11/2011
3/30/2010	1/29/2011	11/19/2011
3/31/2010	1/30/2011	11/20/2011
4/2/2010	2/14/2011	11/24/2011
4/4/2010	2/15/2011	1/19/2012
4/11/2010	2/16/2011	1/20/2012
4/12/2010	2/17/2011	1/21/2012
4/20/2010	2/18/2011	1/22/2012

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**ATTCHMENT A**

**Rain Dates, Central Disposal Site, Petaluma, California**

1/23/2012	11/30/2012	11/20/2013
2/6/2012	12/1/2012	12/6/2013
2/7/2012	12/2/2012	2/2/2014
2/12/2012	12/4/2012	2/5/2014
2/29/2012	12/5/2012	2/6/2014
3/13/2012	12/15/2012	2/7/2014
3/14/2012	12/21/2012	2/8/2014
3/16/2012	12/22/2012	2/9/2014
3/24/2012	12/23/2012	2/26/2014
3/25/2012	12/25/2012	2/28/2014
3/27/2012	1/5/2013	3/3/2014
3/31/2012	2/7/2013	3/5/2014
4/10/2012	2/19/2013	3/25/2014
4/12/2012	3/5/2013	3/26/2014
10/21/2012	3/6/2013	3/29/2014
10/22/2012	3/20/2013	3/31/2014
10/31/2012	3/30/2013	4/1/2014
11/16/2012	3/31/2013	4/4/2014
11/17/2012	4/4/2013	4/25/2014
11/20/2012	4/7/2013	
11/28/2012	10/6/2013	
11/29/2012	11/19/2013	